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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Human rights and forensic science

Addendum

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Introduction

1. The present document contains an additional reply received from the Government of Mexico after the publication of the report by the Secretary-General on the subject (E/CN.4/1998/32).

2. The Governments of Namibia and Zimbabwe sent the curricula vitae of a number of experts. The Government of Chile sent an additional list of experts. The International Centre of Sociological, Penal and Penitentiary Research and Studies sent the curriculum vitae of one expert.

3. The names of the experts referred to above are contained in the annex.

1. The Mexican Government, in response to the request by the Secretary-General of the United Nations concerning implementation of resolution 1996/31, entitled "Human rights and forensic science", presents below information on how it is incorporating into its practices and rules the international standards and measures set forth in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and comments on the model autopsy protocol contained in the *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*.

2. The forensic sciences have been of vital importance in Mexico for the efficient investigation of human rights violations; the training and specialization of national teams in appropriate disinterment and identification procedures is therefore a prerequisite for progress in the investigation of cases of disappearances or torture.

3. A great many of the recommendations adopted by the United Nations have been standard practice in Mexico for some years; this shows the country's concern for efficient and effective post-mortem examinations as called for in Commission on Human Rights resolutions 1993/33, 1994/31 and 1996/31.

4. National institutions exist to supervise and uphold prompt, effective and impartial compliance with the law on behalf of victims' relatives; they can draw upon a team of forensic experts whose skills have helped to solve cases of alleged arbitrary detention, extra-legal execution and torture and to investigate disappearances, through meticulous examination of the information and evidence made available.

5. Such investigations are carried out both at home and internationally in support of the work of a variety of organizations in order to ensure that institutions operate legally and to prevent the illegitimate exercise of authority from impinging on individuals' lives, integrity or safety.

6. Mexico's medical examiners have mandatory powers to investigate all biological aspects of a corpse and to make examinations and partial dissections in order to ascertain the cause of death or the nature and extent of injuries resulting from disease or other causes. In the event of a post-mortem examination, they focus on signs and other evidence which help to determine, for instance in the case of a gunshot fatality, the calibre of the bullet, the distance, position and trajectory, and the cause of death - assisted by forensic ballistics experts who establish the positions of victim and assailant - to supplement the autopsy; and they inspect the scene of the incident for traces of blood or footprints, and to establish where the shot was fired and so forth.

7. In the case of a strangling they study the tell-tale signs - if manual strangulation, the nail-marks, the direction of the strangulation mark, whether the cord, handkerchief or scarf was knotted and so forth, and whether there are divergent marks.

8. In the event of a fatality resulting from serious injury, the contusions and their morphology are analysed together with the agent that caused them - fist, cudgel, hammer, etc. - as stipulated in article 130 of the Federal Code

of Criminal Procedure, which reads: "The Public Prosecutor shall issue orders for the autopsy and burial of the body and the issue of the appropriate death certificates, if it appears that death may have originated from a crime and the police inquiries have not resulted in a prosecution".

9. If the police inquiries clearly show that death did not originate from a crime and thus that no criminal proceedings will be brought, orders for the issue of the death certificate and burial of the body will be given by the Public Prosecutor. Article 303, section III, of the Penal Code applicable in the Federal District (non-federal offences) and throughout the Republic (federal offences) reads: "If the body of the deceased is found, two experts shall state after performing the autopsy, if any is required, that the injury was fatal and subject to the rules laid down in this and the two following articles and in the Code of Criminal Procedure for the Federal District".

10. Mexico's forensic authorities focus specifically on assembling a large number of biological indicators and, if they unambiguously establish the mechanism and consequences of the cause of death, they issue a report to the appropriate authority. The offices of the Attorney-General of the Republic, the Federal District and the Federative Entities maintain a corps of experts in criminology, and various other subjects who can help in the conduct of pre-trial investigations with a view to bringing criminal proceedings and may if necessary call for forensic medical reports.

Comments on the *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*

11. Resolution 1996/31, on human rights and forensic science, points out that Governments need forensic science expertise in investigating deaths and clarifying disappearances or cases of torture, and need to follow the proposed model autopsy protocol prepared under United Nations auspices and set forth in the Manual, and calls on Governments to introduce into their rules and practices the international standards set forth in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

12. Pursuant to paragraph 2 (c) of the resolution, on advice as to the elaboration of principles, procedures, mechanisms, practical experience and training, in addition to the Manual, the Government offers the following comments:

Introduction

13. The introduction to the Manual states that extra-legal, arbitrary and summary executions take place undocumented and undetected in many countries throughout the world, and include deaths resulting from torture or ill-treatment in prison or detention.

14. Under the Federal Torture (Prevention and Punishment) Act and article 64 of the Penal Code applicable in the Federal District (non-federal offences) and throughout the Republic (federal offences), public servants who engage in torture shall be tried and punished not only for the crime of torture but also for grievous bodily harm and homicide.

15. The national penitentiary system has rules stipulating that the treatment of prisoners serving criminal sentences must be proper and humane. The staff of detention centres in Mexico are supervised by local and federal institutions and by the appropriate human rights committees. The institutions concerned include: detention-centre interdisciplinary technical boards; the Department of Prevention and Social Rehabilitation of the Ministry of the Interior and its counterparts in the federated states; the Ministry of the Interior's "Red [suggestions] Boxes"; direct correspondence between inmates and their relatives; and the Citizens' Advice and Legal Information Service.

16. Under article 13 of the Act establishing minimum standards for the social reintegration of prisoners, "Punishment consisting of torture or cruel treatment and involving the unnecessary use of violence against inmates is prohibited ...".

17. The objective here is to prevent and put a stop to deaths from torture or ill-treatment in prisons and detention centres.

Chapter I. International human rights standards

C. Regional organizations

18. In reference to paragraph 1 (Inter-American Commission on Human Rights) and the provision that an autopsy should be performed in the presence of a family member on any person who dies in detention, we suggest that if this, inappropriate though it seems, is to occur, the family member concerned must

(a) enjoy the absolute confidence of the relatives; and

(b) be a medical examiner or have similar skills or knowledge of criminology, forensic chemistry, physical anthropology, forensic photography, forensic medicine, forensic dentistry or fingerprinting, and so forth.

Chapter III. Model Protocol for the Legal Investigation of Extra-legal, Arbitrary and Summary Executions

C. Procedures for an inquiry

19. In reference to paragraph 2 (Processing of the evidence), which states that the body must be identified by reliable witnesses and other objective methods and evidence, we believe that identification by reliable witnesses is not always appropriate, since it is totally subjective and depends on the good faith of these witnesses; hence victims need to be identified by reliable, scientifically proven methods such as fingerprinting, forensic dentistry, forensic physical anthropology or DNA tests.

20. The investigation of the evidence mentioned in subparagraph (a) should, we believe, include forensic evidence and forensic and criminological medicine reports, since these are at present the most advanced means of identifying bodies.

D. Commission of inquiry

21. Regarding paragraph 1 (Factors triggering a special investigation), it must be pointed out that the unavailability of physical evidence or testimony essential to the investigation is not sufficient grounds for believing that "the Government was involved" in a person's death: this is an argument that Mexico refuses to countenance.

22. Furthermore, the creation of investigation commissions is not relevant to Mexico since the National Human Rights Commission is currently functional and has the requisite powers. A proliferation of parallel bodies set up in an effort to increase the credibility of investigations and their findings would create conflicts of powers and impede progress.

Chapter IV. Model autopsy protocol

23. There are no discrepancies between the proposed model autopsy protocol and standard practice in Mexico. Every one of the practices is in conformity with the model, although they are carried out by different bodies: experts in the Public Prosecutor's Office, forensic medicine experts, fingerprinting experts. Other identification techniques are used with personal identification and identification by fingerprints being mandatory: radiology, odontology, physical anthropology, serological blotting, photoradiography and histopathological and neutron-activation methods.

B. Proposed model autopsy protocol

24. The preservation of marks or traces of tyres and fingerprints and ballistics questions have not been dealt with in paragraph 1 (a) to (k) (Investigation of the scene).

25. Hospital records, alcohol or drug use, suicide attempts and personal habits, referred to in paragraph 1 (h), are the responsibility of the Public Prosecutor's Office investigating the crime. All other paragraphs in the model are the responsibility of the Forensic Medicine Service.

26. It must be pointed out that Mexico's corps of medical examiners does not have enough pathologists to assign one to each autopsy, as in other countries. Mexico has three or four specialists per shift, whose task it is to analyse the necessary evidence in the course of an autopsy, so that it will yield reliable findings supporting a presumed pathology or identification of another presumed agency as the cause of death: for instance, pneumonia, peritonitis, myocardial infarction, pulmonary infraction, thrombosis, enteritis, or histopathological damage.

27. Video-recording should be added to the various systems mentioned in paragraph 1 (a) and paragraph 2 (Autopsy) subparagraphs (c), (e), (g) and (i), such as photographing and sketching the scene; as this technique progresses, it is proving to be a more appropriate means of recording the physical scene for autopsy purposes.

Chapter V. Model protocol for disinterment and analysis of skeletal remains

28. It should be specified that the official record must indicate the persons who took part, the name of the public servant who authorized the disinterment, the substance with which the grave, coffin and body were fumigated, and the degree of putrefaction and skeletal decay.

29. There must also be a description of the sample taken for DNA analysis and determination of biological kinship, or a statement that the remains were not in a condition permitting the isolation of DNA.

30. Having analysed the model autopsy protocol, we can state that improving and applying it will be of benefit to society at large, since no doubts as to the causes of death will remain in the minds of the judges, criminologists, forensic experts or penologists involved in the investigation.

Annex

RECOMMENDED EXPERTS AND INSTITUTIONS

A. Experts and institutions recommended by Governments

Chile

Ms. Nora Patricia Hernández Mellado, Ms. Isabel Margarita Reveco Bastías, Ms. Silvia Quevedo Kawsaki, Mr. Luis Silvio Ciocca Gómez, Mr. Iván Efraín Cáceres Roque, Mr. Kenneth Paul Jensen Nagelach, Mr. David del Pino Kloques.

Mexico

As regards the list of Mexican forensic experts who could be called upon to provide technical services and advice to the Office of the High Commissioner for Human Rights and international human rights bodies, it should be pointed out that Mexico has a very large number of professionals trained in forensic science. We list below a number of Mexican experts belonging to the Forensic Medicine Service of the Higher Court of Justice of the Federal District who could collaborate with the bodies concerned:

Dr. Gilberto Ibarra Mora
Dr. Rodolfo Rojo Urquieta
Dr. Luis Miguel Rosas Bárcenas
Dr. Felipe E. Takajashi Medina
Dr. Macario Susano Pompeyo
Dr. Mario Noguez Blancas
Dr. Augusto P. García Gutiérrez
Dr. Blanca Carrillo García
Ms. Sara Mónica Medina Alegría
Mr. Miguel Oscar Aguilar Ruiz
Dr. Roberto Muñiz Garibay
Dr. José Ramón Fernández Cáceres

They can all be contacted at the Dirección del Servicio Médico Forense, Avenida Niños Héroes No. 102, Colonia Doctores, Post Code 06720, in the Federal District, Mexico.

We are also sending the curricula vitae of the following experts suggested by the Office of the Attorney-General and the National Human Rights Commission:

1. Office of the Attorney-General

   Medical experts:

   Dr. Josefina León Perea
   Dr. Angel Martínez Matías
   Dr. Alberto Rojas Saldaña

Chemical experts:

Mr. Gillermo Amezcua Camarillo
Ms. Ana Silvia Cid de León González
Mr. Isidro Hinojosa López

Criminologists:

Mr. Eleazar Manuel Ulises Castro
Mr. Arturo Ramírez Rosete

2. National Human Rights Commission:

Medical expert:

Dr. Ismael García Garduza.

Namibia

Dr. Paul Stefan Ludik

Zimbabwe

Mr. Leonard Tendayi Nhari
Ms. Shingirai B. Kanoyangwa
Ms. Eunita Masuka
Ms. Vongai Chinherende
Ms. Sylvia Chitumba
Mr. Bamusi Saidi

B. Experts recommended by non-governmental organizations

International Centre of Solciological, Penal and Penitentiary Research and Studies:

Mr. Claudio Zanghi